

Exhibit No. 1Date 2-20-07Bill No. SJ11

Senate Joint Resolution No. 11 (SJ11)

Short Title: Study Treasure State Endowment Program

Summary of comments presented by Wade DeBoo, P.E.
February 20, 2007

I support SJ11 for the following reasons:

1. Ethics Concerns about the process that is currently used.
 - a) Is the current process used consistent with state ethics law? (See attached letter and Memorandum to Governor Schweitzer)
 - b) Will a group of your business competitors give you a fair and unbiased review and score when their projects are in competition for the same dollars?
 - c) Will a person and group give the same degree of scrutiny to a project if that person is sitting in the same room and on the same committee as they would if the that person is not?
2. Scoring for statutory priority 3 is supposed to be purely based on technical merit.
 - a) Being selected for the review committee is having a heavy impact on scoring for priority 3.
3. The review committee is not presented with written standards to evaluate the technical design.
 - a) This lack of written standards makes it difficult for project engineers to prepare a technical report that "covers all the bases". In combination with item 1 listed above, it also opens up the door for inappropriate scoring.
4. The review committee is allowed to overrule the judgment of the project engineer completing the study.
 - a) The project engineer typically visits the community numerous times, spends hundreds of hours of thought, planning and design.
 - b) The review engineer spends a few hours reading through the report and prepares a handful of pages summarizing the report, then gives a short verbal summary to the review committee.
 - c) The review committee listens to the verbal summary discusses the project (sometimes for a few minutes, sometimes for an hour); then votes on the score.
5. Some, but not all, conflicts of interest have previously been identified for review committee members.

February 9, 2007

Governor Brian A. Schweitzer
Office of the Governor
Montana State Capitol Bldg.
P.O. Box 200801
Helena MT 59620-0801

RE: HB 11, HB 512, LC 1982

I would like to express our support for HB 512 and LC 1982. HB 512 funds badly needed infrastructure projects through the TSEP program. LC 1982, if passed, will hopefully address ethics and conflict of interest concerns that could taint the TSEP program in subsequent years.

I've attached a memorandum detailing some of our concerns regarding the current ranking system used for TSEP. If the concerns in the memo have merit, then the ranking of projects for HB 11 and HB 512 have been influenced by a system which violates state ethics law. This would call into question whether the appropriate sequence of projects are included in HB 11 and HB 512 or whether the ranking order would have been different if the ethics issues had previously been eliminated. We feel it would be inappropriate for the state to award \$17 million dollars in grants based on a ranking system that is in violation of state ethics law.

Dennis Unsworth, Montana Commissioner of Political Practices, recently commented that this issue was a matter "of concern". However, since he would be required to act as an impartial judge should a formal complaint be brought to him, he could not give a legal opinion.

I would like to encourage further investigation into this matter prior to the approval of HB11. I'm sure you would agree it is by far better to err on the side of caution with regard to this type of matter than to have even the perception that unethical practices may have been used. If it is confirmed that the ethics laws were violated, it would seem an appropriate solution for this funding cycle to pass HB 512, which would in effect nullify most errors resulting from unethical practices.

Thank you for your time and consideration of this matter.

Sincerely,

THOMAS, DEAN & HOSKINS, INC.



Wade DeBoo, P.E.

C: Jim Edgecomb, TSEP
Gus Byrom, CDBG
Mike Cooney, President, Montana Senate
Corey Stapleton, Minority Leader, Montana Senate
Scott Sales, Speaker, Montana House
John Parker, Minority Leader, Montana House
Trudi Schmidt, Senate Ethics Committee
Sue Dickenson, House Ethics Committee

WJD/wjd

MEMO

Re: TSEP grant program ethical concerns regarding current scoring and ranking of projects:

- There is an ethics concern of how the projects are currently scored and ranked.
 - MCA 2-2-05 (5) states, "A public officer or *public employee* may not perform an *official act* directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking."
 - MCA 2-2-102 (7d) includes in the definition of *public employee*, "a person under contract to the state."
 - MCA 2-2-102 (5) defines an *official act* as, "a **vote**, decision recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority".

It appears the current system of TSEP review, set up by the Montana Department of Commerce (MDOC), is in violation of the code listed above. The MDOC hires engineering firms (by contract) to score statutory priorities #1 and #3. The group of engineers discuss the projects and **vote** on the score for each project.

The contracting engineers fall under the definition of *public employee* so are subject to the ethics law stated above. When casting these votes, they are substantially affecting a competing business to its detriment. The projects the engineers review are each in competition with their own projects, which they represent on behalf of the grant applicants.

Since the TSEP program is only proposing to fund approximately half of the projects, those scoring lowest are not anticipated to receive funding. Most of the projects that don't receive funding will not go forward to design or construction, thus eliminating engineering employment for those on the bottom half of the list.

There is a second way in which the votes cast detrimentally affect their engineering competition. Engineering firms representing projects that don't receive funding have a difficult time marketing their services on future projects because they won't have a proven track record of getting clients "free money".

In addition, during the most recent funding cycle there were at least two review engineers who were actively engaged in a partnership or some other business venture with another engineering firm for which they were voting on that firm's score. This on its own appears to be a glaring conflict of interest that was allowed. It is not uncommon for engineering firms to partner on projects. Sometimes these firms are in competition and sometime they are in business together. Even if there are no active agreements, there is always the potential for future business arrangements, which adds complexity to the conflict of interest problems.

Examination of results of the current ranking and ranking during the last funding cycle shows the true impact of employment with the Department of Commerce as a review engineer or Quality Control engineer. A summary of the statistics follows.

- Current Cycle (2007)
 - Of the projects projected for funding, only 6 out of 31 or 19 % are represented by engineers who are not on the review committee.
 - Of the projects not projected for funding, 15 out of 26 or 58% are represented by engineers who are not on the review committee.
- Previous Cycle (2005)
 - Of the top 26 projects only 2 out of 26 or 8 % are represented by engineers who are not on the review committee.
 - Of the bottom 21 projects 14 out of 21 or 67% are represented by engineers who are not on the review committee.

The information provided above clearly illustrates our concerns. The process set up by the MDOC for reviewing TSEP construction grant applications is unethical and possibly illegal. The system is putting review engineers in a position whereby they are violating Montana ethics law. However, engineering firms feel compelled to be on the committee in order to remain competitive with those engineering firms that have been dominating the review process in previous funding cycles.

The result of this program is that certain firms that have been involved with the program the longest have a competitive advantage over others who are not involved or are just beginning involvement. Many small communities use the TSEP construction grant funding success as the predominant measurement tool for engineering selection. Unless the system is drastically revamped, the unethical practices of the past will hinder true competition for engineering services.

The procedures set up by the TSEP program have a trickle down effect on funding for other programs. The CDBG construction grant program piggybacks off the scoring completed for TSEP. The DNRC RRGL program recently expressed concern about funding projects that don't receive TSEP funding. Thus, if unethical procedures are being followed for the TSEP program they impact other funding programs as well.